

CHAPTER 4

BRIEFING THE CASE

The briefs are written arguments put together by each party. If you are the appellant, your brief will explain why you believe the trial judge was wrong. If you are the respondent, your brief will tell the justices why the trial judge was right.

The briefs are the single most important part of the appellate process. The record (the clerk's or appendix and reporter's transcripts) provides the court with a picture of what occurred at the lower court. But it is the arguments in the briefs that tell whether or not there was an error in those proceedings and whether it changed the outcome of the trial. The best briefs contain your entire argument, guiding the Court through the case and using the record and legal authority to justify your points. Because of the specialized knowledge necessary for writing a good brief, the briefs are also by far the most difficult part of the appellate process.

There are three briefs:

1. The Appellant's Opening Brief (AOB) – The AOB tells the Court of Appeal (a) what judgments or orders the appellant is appealing, (b) why the appellant thinks the superior court acted incorrectly in making those judgments or orders, (c) what legal authority supports the appellants argument, (d) how the court's actions hurt the appellant, and (e) what the appellant wants the Court of Appeal to do if it finds the superior court acted incorrectly.
2. The Respondent's Brief (RB) – The RB responds to each of the issues raised by the appellant, explaining why the appellant's arguments are not correct and expressing support for the trial court's decision.
3. The Appellant's Reply Brief (ARB) – The ARB addresses the arguments made by the respondent and shows how they do not overcome the arguments made in the appellant's opening brief. No new issues may be raised in the reply brief.

Appellant's Opening Brief (green)

The appellant carries the burden of convincing the appellate court that the trial court made a prejudicial error – that is, an error that changed the outcome of the case. If you are an appellant, the AOB provides your first and best chance to

prove that error. The rest of this section will provide guidance that may be helpful in preparing that critical brief.

Time Limits

There are two potential due dates for the AOB depending on whether the case is proceeding with a clerk's transcript or with an 8.124 appendix (for explanation of these components of the record, see Chapter 2):

- If the appellant chooses to have a clerk's transcript prepared, once the Court of Appeal receives the record on appeal (the clerk's and reporter's transcripts, or just the clerk's transcript), the clerk sends a notice to all parties that the record has been filed. Then the AOB is due 30 days from the notice.
- If the appellant or the parties chose to prepare their own 8.124 appendix and did not request a reporter's transcript, the clerk's office **will not** send a notice. The appellant's opening brief and appendix are due 70 days from the date appellant filed the rule 8.124 election in the superior court. (CRC rule 8.212(a).)

Contents

The appellant's opening brief is a single bound document that contains:

- Cover
- Table of contents
- Table of authorities
- Statement of the case
- Statement of appealability
- Statement of facts
- Argument
- Conclusion
- Certificate of compliance with length limitations
- Proof of service

(For a discussion of attachments to the brief, see "Considerations that Apply to All Briefs" later in this chapter.) A short example of an appellant's opening brief is included as [Sample Form K](#). In this example, we have used the facts from *Goldilocks and the Three Bears* as our case. There are only one or two items in our statement of authority and only one issue. We hope that this example from a familiar story will be helpful as you prepare your tables of contents and authorities and set out the facts and issues of your case. You may find it useful to follow

along in this sample brief as you read about the various parts of a brief in the discussion that follows.

Cover

The cover includes identifying information about the case. (See [Sample Form K](#).) The cover should be made out of stiff paper called "cardstock," and should be green. The back of the brief will be a blank page the same color as the front cover and made out of the same cardstock material. The rest of the brief should be bound within the cardstock covers. (See *General format requirements* later in this chapter.)

Table of Contents and Table of Authorities

The **table of contents** lists the sections of the brief by page number (CRC rule 8.204(a)(1)(A)). The **table of authorities** lists the cases (in alphabetical order), the statutes and other authorities used in the brief, and the number of the page or pages on which each can be found in the brief (CRC rule 8.204(a)(1)(A)). Don't put in the page numbers until the brief is completed, for only then will the final page numbers be known. (See [Sample Form K](#).)

Statement of the Case

The statement of the case tells the Court of Appeal the procedural history of the case. You should explain what happened in the trial court, in chronological order from the filing of the complaint through the final judgment. The statement of the case should tell about the motions, hearings, and orders that are relevant to the issues on appeal, including the date on which the complaint was filed and the date on which the *Notice of Appeal* was filed. (See [Sample Form K](#).) The appellant must show where this information can be found in the record by putting in the numbers of the pages in the clerk's or reporter's transcript where this information appears. The reference is set out in parentheses as **CT** (clerk's transcript) or **RT** (reporter's transcript) followed by the page number. For example: "The complaint in this case was filed on December 25, 2000. (CT 1)." The "(CT 1)" tells the court it can find the first page of the complaint (which will have the file-stamp on it) on page 1 of the clerk's transcript.⁶ The "statement of the case" differs from the facts of the case. The statement of the case refers to what happened to the case *within the court*. There will be a time to address the facts of the case later in the brief. (See [Sample Form K](#).)

⁵ Other sources that may be referenced are abbreviated as follows:

Appellant's appendix – AA	Appellant's reply appendix – ARA
Joint appendix – JA	Appellant's opening brief – AOB
Respondent's appendix – RA	Respondent's brief – RB
Appellant's reply brief – ARB	Superior Court file – SC file

Statement of Appealability

Here, the appellant tells the court why this case is appealable. This may already be clear to the appellant, but for the person reading the brief for the first time, this is the statement that sets the stage. Remember in chapter 1 we discussed the problem of appealability and why it was so important. (See pages 3-4.) The case may be appealable because there is a judgment or order of dismissal (after demurrer or other motion) and the case is finished, *or* there may be an order (usually one after the judgment, or after a hearing in a family law or probate case) *or* there may be a non-final judgment. If you are appealing an order or a non-final ruling, you need to explain why it is appealable. (CRC rule 8.204(a)(2)(B); Code of Civil Procedure, section 904.1.) Generally, an appellant states the statute that gives him or her the right to appeal the case. (See [Sample Form K.](#))

Statement of the Facts

Before starting on the facts, the appellant should read through the entire record (the reporter's transcript, clerk's transcript or appendix, and exhibits, if any). In preparing the statement of facts, the appellant may use only the information he or she designated to be included in the record. For every statement of fact you make in the brief, there must be a **citation** showing the page number where that information can be found in the record (the reporter's transcript, clerk's transcript or appendix, or exhibits).

Your statement of facts will depend on the nature of the proceedings in the trial court. If you are appealing after a full trial, you must remember that the Court of Appeal will not retry the case. The Court of Appeal does not change the facts that were found by the superior court judge or the jury in a trial, as long as there is sufficient evidence to support those findings. If the record includes conflicting facts (for example, one witness said the light was green, and the other said it was red), the Court of Appeal will presume the superior court's or the jury's findings on the facts are correct. The Court of Appeal does not change the judge's or jury's decision about whom to believe if the witnesses disagreed about what happened. This means that if you are appealing after a trial, you should assume that the Court of Appeal will resolve all evidentiary conflicts in favor of the judgment being appealed. In other words, you should state the facts in the way that supports the judgment, even if your witnesses or other evidence gave a different version of what happened. Of course, you also may tell your side of the story as well, but you should base it only on evidence or testimony presented to the judge or jury. (See [Sample Form K.](#))

Your statement of facts will be different if the case was dismissed without a trial. Demurrers and summary judgments are two common types of pretrial motions that may cause a case to be dismissed without a full trial. Because cases

frequently are dismissed on demurrer or summary judgment, you must write the statement of facts differently than if the facts had already been established in the trial court proceedings. These concerns are discussed in [Appendix 7](#) which discusses demurrer and summary judgment.

Argument

This is the part of the brief in which you discuss each of the errors you believe the superior court made. Without question, this is the most important part of the brief, if not of the entire appeal. Within this section, the appellant must show that the trial court committed what is called “prejudicial error.” It is not enough to show the trial judge made one or more mistakes. The error must be bad enough there is a very good chance it changed the outcome of the case. In order to show the trial court did something the appellate court will find to be legal error, it is necessary to have knowledge of the relevant legal authorities as they apply to the various decisions the trial judge made. This is the part of the brief that is hardest for self-represented parties. This law can be learned, but for anyone not trained as a lawyer, that learning process will probably be slow and difficult.

You should discuss each issue separately in light of the facts and the law. The appellant has the burden of showing that there was an error (or errors) so serious that the court’s decision must be reversed. In figuring out the issues, think about what happened at the trial or hearing where the alleged errors were made. Did these errors involve findings of fact, discretionary rulings by the judge, or questions of law? Do you think these rulings were really wrong? What did these rulings do to the outcome of your case? You will need to read some legal materials on the subject. Public law libraries are excellent resources for conducting legal research, and law librarians are trained to help with legal research. See [Appendix 2](#) for information on library locations and hours. Look at books that are written about the area of law that your case involves. For example, if your case involves a possible breach of contract for work that was not done or work that was not done properly look in the area of contract law. Ask the librarian to suggest readings about contracts and breaches of contract. In books written about the law (“secondary sources”), you will find mention of appellate opinions previously decided in the area of contracts. You may want to read those cases. They may tell you which laws apply to your case. Based on this information and the facts of the case, the appellant should make a list of the issues he or she wants to raise—the issues the appellant thinks hurt his or her case in superior court the most or the ones that would help his or her case the most now.

After making a list of the issues, the appellant then needs to determine what **standard of review**⁷ the court will apply to each issue. When the appellant argues that the superior court erred in its ruling, the Court of Appeal looks first at what the standard of review is for that particular issue. The three most common standards of review are (1) abuse of discretion, (2) substantial evidence, and (3) de novo review.

1. *Abuse of Discretion* – If the superior court’s decision is one that involved the exercise of its discretion, the “abuse of discretion” standard is used. Any decision for which the judge exercises his or her discretion, such as admissibility of evidence or issuance of restraining orders, comes under this standard. Abuse of discretion occurs when the superior court judge makes a ruling that is arbitrary or absurd—which does not happen very often. The Court of Appeal rarely reverses a superior court judge’s ruling using this standard.
2. *Substantial Evidence* – If you are appealing the factual findings of a judge or jury after trial, the “substantial evidence” standard is used. The Court of Appeal reviews the record to make sure there is substantial evidence to support the factual findings made by the court or jury. The Court of Appeal’s function is not to decide whether it would have reached the same factual conclusions as the judge or jury. Instead, the Court of Appeal merely decides whether a reasonable fact-finder could have come to this conclusion based on the facts in the record. If there is a conflict in the evidence, and a reasonable fact-finder could have resolved the conflict either way, the Court of Appeal will affirm the decision. Because the judge or jury at the trial saw the witnesses and heard what the witnesses said, they are in a better position to decide what actually happened and who is telling the truth.
3. *De Novo* – *De novo* is a Latin phrase meaning “from the beginning.” In de novo review, the Court of Appeal does not defer to the decisions made in superior court. Instead it looks at the issues as if the superior court had never ruled on it. This type of review is generally limited to issues involving questions of *law*. If the issues involve questions of law—for example, the interpretation of a contract or a statute—the Court of Appeal does not assume the superior court’s ruling is correct but looks at the issue “from the beginning,” exercising its independent judgment. A trial court’s ruling granting a demurrer or motion for summary judgment is also reviewed under the de novo standard of review. For this reason, reversals happen more often when what is being appealed is a trial court’s decision to grant a demurrer or

⁶ When the Court of Appeal reviews an issue, it needs some kind of rules or guidelines to determine whether the superior court made an error in its decision. Different kinds of rulings require different kinds of review guidelines. These guidelines are called **standards of review**.

a summary judgment rather than when you are appealing after a full trial of the case.

Once you determine which standard of review applies to the issue, you must point out why you think the court made the wrong decision and why you are entitled to reversal under that standard of review. Explain why this incorrect decision harmed your case so much that the error should cause the superior court's order or judgment to be reversed.

For every statement of law you make in the brief, there must be a citation to an appellate court opinion, a statute, a rule, or legal treatise that sets out that proposition. This is where legal research will be required in the writing of your brief. Citations usually appear at the end of the sentence in parentheses. For more information on legal citations, see [Appendix 3](#).

Think of the argument section of your brief as a book in which each issue is a separate chapter. Set off each issue with a heading similar to a chapter title, and subheadings if needed, describing the arguments that will follow. (CRC rule 8.204(a)(1)(B).) ([Sample Form K](#).)

Conclusion

After you have discussed each issue, you should briefly restate your position in a **conclusion** and tell the court what you want it to do. (See [Sample Form K](#).) Be specific in your directions to the court, detailing how you think the court should rule on the matter.

Certificate of Compliance and Proof of Service

If the opening brief is produced on a computer, it must also include a certificate of compliance with the length limitations (see [Sample Form K](#)). Finally, in all cases, the brief must include a proof of service. ([Sample Form C](#).)

Respondent's Brief (yellow)

The respondent's brief gives the respondent an opportunity to reply to the arguments that the appellant makes in the appellant's opening brief and to explain why the Court of Appeal should *not* reverse the trial court.

Time Limits

The respondent's brief is due 30 days after the appellant's opening brief is filed. (CRC rule 8.212(a).)

Contents

The respondent's brief should follow the same general format as the appellant's opening brief, with a cover (for a respondent's brief the cover is yellow), table of contents, table of authorities, statement of the case, statement of facts, argument, conclusion, certificate of compliance, and proof of service. (For a discussion of attachments to the brief, see *Attachments to briefs* later in this chapter.)

The facts are already set out in the appellant's opening brief. However, remember the decision is in the respondent's favor and the facts must be set out to support the winning side of the case. Make sure the facts, as stated by the appellant, are accurate and any conflicts in the facts have been resolved to support the decision. You may end up including a shorter version of the facts. Or, if you totally agree with the way the appellant has set out the facts, you can ask to adopt those facts as yours. As with the appellant's opening brief, you need to make a reference to the record for every fact and for every legal statement, and provide headings and subheadings for each point. (CRC rule 8.204(a).)

As the respondent, you will want to address the facts and legal issues raised in the appellant's opening brief. First of all, make sure (1) there is a final judgment, if the appeal is from a judgment, or (2) the order is appealable, if the appeal is from an order and (3) the *Notice of Appeal* was filed on time, or "timely filed." If there is a problem with the appeal, you may file a motion to dismiss the appeal and/or argue in your respondent's brief that the appeal should be dismissed.

The respondent has the burden of responding to the issues raised by the appellant and showing that the ruling of the trial court was correct. If the court's ruling was incorrect, you, as respondent, must show that the mistake the court made was so small that there was no prejudice. You should not rely on the legal references made by the appellant in his or her opening brief. You probably will need to do some reading on the subject and conduct your own legal research. Go to the county public law library (see [Appendix 2](#)) and research the case law and statutes that relate to the issues on appeal. Reread the court's statement of decision, if there is one, or the orders and judgment set out in the minutes of the court. Be sure to respond to each and every issue raised in appellant's opening brief. Deal with each issue separately, with headings and subheadings that match the ones used by the appellant.

Check the record and make sure that an objection or motion was made to challenge the ruling in the trial court at the time the ruling was made. If no objection or motion was made, the appellant may have waived (given up) the error. Tell the court in your brief if you believe there was a waiver. If the Court of Appeal believes the appellant has waived the issue, it may decide to not even

consider the issue the appellant has raised. (But ordinarily you should also argue why it was not error, even if it looks like the appellant waived it. The Court of Appeal may decide the issue was not waived, after all. Better safe than sorry.)

There may be additional issues not mentioned in the appellant's brief—for example, concerning the statute of limitations or other defenses—that may result in a decision in your favor. You should discuss these issues in your respondent's brief even though the appellant did not bring them up.

Appellant's Reply Brief (tan)

Because the appellant has the burden of showing the Court of Appeal that the trial court erred, the appellant is given the opportunity to answer arguments in the respondent's brief. The appellant's reply brief is optional, however.

Time Limits

The reply brief is due 20 days after the respondent's brief is filed. (CRC rule 8.212(a).)

Contents

No new issues may be raised in the reply brief, because the respondent will not have any opportunity to respond to the reply brief. In the reply brief the appellant should: show how the respondent has not countered the appellant's claims stated in the opening brief; address the cases and the arguments raised in the respondent's brief; and respond to any new issues the respondent raises in its brief. The cover for an appellant's reply brief should be tan.

Some Important Things to Remember When Writing Your Briefs

1. *Table of contents and table of authorities* – When you have finished your brief, copy each heading and subheading into a table of contents (which will be page i of your brief.) (See [Sample Form K](#).) The person reading your brief should be able to get a good overview of the case by skimming the table of contents. Then go through the brief and write down all of the cases you cited, then all the statutes, then all the rules of court, then all the other books and articles. List the cases alphabetically, the statutes alphabetically by code and numerically by section number within each code, and the books and articles alphabetically by author. Type these lists—cases, statutes, and “other authorities”—and note on which page or pages each item is found in the brief. (See [Sample Form K](#).)

(CRC 8.204(a).) The table of contents and table of authorities should have a different set of numbers from the rest of the brief using small Roman numbers. For example, the tables could be pages i-iv, then you would start with page 1 for the text of your brief.

2. *Certificate of compliance with length limitations* – Every brief produced on a computer must include a certificate of compliance stating the number of words in the brief. A brief produced on a computer must not exceed 14,000 words, including footnotes. A brief produced on a typewriter must not exceed 50 pages. The table of contents and table of authorities are not counted in computing the number of pages or words. (CRC rule 8.204(c).) You may rely on the word count of the computer program used to prepare the brief. ([Sample Form K.](#))
3. *Attachments to briefs* – You should be very careful about including attachments to your brief. Improper attachments can cause your brief not to be filed, or to be stricken or returned to you for corrections. (CRC rule 8.204(e).) Before including attachments, you should carefully consult CRC rule 8.204(d).

You may attach to your brief copies of exhibits or other materials already contained in the existing record on appeal. The attachments must not exceed 10 pages, unless you get permission from the court. (CRC rule 8.204(d).)

If you include any attachments to your brief, you must file a declaration stating whether the material is part of the record and, if not, why each attachment is permissible under the rules.

4. *General format requirements* – CRC rule 8.204 describes the format requirements for briefs. Briefs should be:
 - Typed or prepared on a word processor or computer;
 - On 8-1/2-by-11 inch recycled, plain white paper of at least 20-pound weight (except for the cardstock front and back covers) -- do not use legal or pleading paper with numbered lines;
 - One-and-a-half or double spaced, with single-spaced headings and footnotes; both sides of paper may be used unless you prepared the brief on a typewriter;
 - Bound on the left side of the pages; if stapled, the staples must be covered by tape (most briefs, however, are Velobound);
 - Printed with a type size of at least 13 points or prepared on a standard pica typewriter (not elite) with type size no smaller than 10 characters per inch; and

- Side margins of 1-1/2 inches, and upper and lower margins of 1 inch.
- Pages must be consecutively numbered.

The cover colors are standardized, per CRC rule 8.40(b), as follows:

Appellant's opening brief – green

Respondent's brief – yellow

Appellant's reply brief – tan

Appellants Appendix – green

Respondents Appendix – yellow

Joint appendix – cream or white

Petition for rehearing (discussed later) – orange

Answer to Petition for Rehearing – blue

Petition for review (discussed later) – white

Answer to Petition for Review – blue

The pages should be bound in pamphlet or book style. On the cover you should put the title of the case, the superior court and Court of Appeal case numbers, the name of the superior court judge and county, the type of brief (for example, "Appellant's Opening Brief," "Respondent's Brief," or "Appellant's Reply Brief" (see [Sample Form K](#)), and your name, address, and daytime telephone number. (CRC rule 8.204(b).) The court heading should be centered at the top of the brief cover.

5. *Service* – The original and four copies of the brief must be filed with the Court of Appeal, showing services on all the parties, the Clerk of the superior court (for delivery to the judge in the case), and the California Supreme Court (four copies). (CRC rules 8.212(a), (c), 8.40(b)(2)(A).) (See [Sample Form C](#); for court addresses, see [Appendix 2](#)). You must also serve any public officer or agency required to be served by CRC rule 8.29.
6. *Extensions of time* – If you need more time to file the appellant's opening brief, the respondent's brief and/or the appellant's reply brief, you and opposing counsel can stipulate (agree in writing to allow extra time, see [Chapter 2, footnote 4](#)) up to a maximum of 60 days for each brief. Stipulations to extend time (see [Sample Form Q](#)) must be filed in the Court of Appeal before the date the brief is due. If you need more time and have already stipulated to 60 days or if you are unable to get opposing counsel to agree to a stipulated extension, you must file a motion or application for extension of time with the Court of Appeal. (CRC rules 8.212(b), 8.50, 8.60, 8.63) (See [Sample Form R](#).) Do not

delay when requesting an extension of time to file a brief. It is wise to do so as early as possible and before any deadlines. For a more detailed description of applications/stipulations for extension of time, see [Chapter 5](#).

If the appellant's opening brief or a respondent's brief is late, a notice (under CRC rule 8.220) will be sent that gives the party 15 more days to file the brief. If the appellant's opening brief is not filed within the 15-day grace period, the appeal will be dismissed. If the respondent's brief is not filed on time, a notice (CRC rule 8.220) will be sent. If the brief is not filed within the 15 day grace period, the court will decide the case on the appellant's opening brief, the record, and any oral argument by the appellant. (The respondent will not be allowed to make an oral argument to the court either.) Within the 15-day period, a party may apply for an extension of that time for good cause. If a brief is not filed after the extension is granted, the court may dismiss the appeal. (CRC rule 8.220(d).)

7. *Exhibits* – In some superior courts, exhibits are **lodged** with the court. Since they were lodged, the superior court returns the exhibits to the parties at the end of the case. A party who wishes to have the Court of Appeal consider an original exhibit must file a notice (which designates the exhibits to be sent) in superior court within 10 days after the respondent's brief is filed. A copy of the notice must be sent to the Court of Appeal. Ten days after the notice is filed in superior court, any other party wishing to have the Court of Appeal consider additional exhibits may also file a notice in the Superior court. Under CRC rule 8.224(b), the superior court and the party requesting that exhibits be lodged with the Court of Appeal must each put the designated exhibits in their possession into numerical or alphabetical order. The exhibits are sent to the Court of Appeal along with two copies of the list of exhibits being sent. Since exhibits are lodged with the Court of Appeal, they will be returned at the end of the case.
8. *Non-compliant briefs* – If the brief is not done properly— for example has no table of authorities or no citations to the record—the Court may decline to file it. Or at the request of the opposing party or on its own motion, the court may strike the brief and return it to the party for corrections and changes. In making these corrections, generally it is necessary to prepare a new document, which must be served on all the parties and filed with the court. If the incorrect or omitted items have been redone properly, the court files the corrected document. If the items have not been redone properly, the court may dismiss the case if it is an appellant's opening brief, or let the appeal proceed on the record and the appellant's opening brief if it is the respondent's brief. (CRC rule 8.204(e).)

Sample Form C

PROOF OF SERVICE BY MAIL INSTRUCTIONS FOR SUPERIOR COURT OR COURT OF APPEAL

Each document you prepare must be served on all counsel and self-represented parties in your case. The document must be served by mail or hand-delivered by someone who is over the age of 18, not a party to the appeal, and a resident of the county where the mailing or delivery occurred.

This sample form is for service by mail, which is the easiest and most common method of service. If you wish to have the document delivered in person instead of mailed, you may adapt this sample form by replacing line 3 with language indicating the name of the person(s) to whom the document was delivered, the date and time of delivery, and the address where the delivery occurred. (For sample language for a hand-delivery, see page 4, line 3b of [Sample Form F](#).)

All documents must be served on all attorneys of record and any self-represented parties. **If the document is a brief, you must also serve one copy on the Superior Court and five copies on the California Supreme Court. If the document is a brief or petition, you must serve one copy on any public officer or agency required to be served by CRC rule 8.29.**

How to serve a document:

Make a copy of your document for each person or entity you must serve and enough copies for filing with the Court of Appeal. The person doing the mailing must complete the Proof of Service and attach an unsigned copy to each copy of the document being served. The person doing the service should mail a copy of the document to each person listed in the Proof of Service by depositing it in the United States mail with postage fully prepaid. The envelopes may be deposited in a United States post office or mailbox. The original document cannot be filed with the court until service has been completed by mailing the copies. After the envelopes have been deposited into the mail, the original Proof of Service should be signed and attached to the original document for filing.

Filling out the Proof of Service form:

Fill out the case name, Court of Appeal case number, and Superior Court case number. If you are filing the document in the Superior Court, use the Superior Court case name. If you are filing in the Court of Appeal, use the Court of Appeal case name.

Fill out the name of the non-party over the age of 18 who will be doing the mailing.

On line 2, specify the residential or business address of the person doing the mailing, and check the appropriate line for residence or business.

On line 3, specify the date of the mailing, the name of the document being served (for example, "Appellant's Opening Brief"), and the place where the mailing took place. List the full names and addresses of all the parties or their attorneys to whom the documents are being mailed. If the

Sample Form C

document is a brief, you must also serve the Superior Court, the California Supreme Court (5 copies). If the document is a brief or petition, you must serve any public officer or agency who must be served under CRC rule 8.29. These addresses must also be listed on the Proof of Service.

Date the Proof of Service, type or print the name of the person doing the mailing, and include the signature of the person doing the mailing.

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.

Sample Form C

PROOF OF SERVICE BY MAIL

CASE NAME: _____
COURT OF APPEAL CASE NUMBER: _____
SUPERIOR COURT CASE NUMBER: _____

I, _____ (*specify name of person doing service*), declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a resident or employed in the county where the within-mentioned service occurred.

2. My residence or business address is (*specify*):

_____ residence _____ business

3. On _____ (*specify date*), I served the _____ (*specify document*) by United States mail as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and I deposited each sealed envelope with the United States Postal Service in _____, California, for delivery as follows:

(*List addresses and send 1 copy to each party*)

California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(*5 copies of briefs only*)

_____ Superior Court

(*List address of Superior Court and serve 1 copy of briefs only*)

(*List address of any public officer or agency required to be served by CRC rule 8.29 and serve 1 copy of briefs only.*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(*TYPE OR PRINT NAME*)

(*SIGNATURE OF DECLARANT*)

Sample Form F

NOTICE DESIGNATING RECORD ON APPEAL - INSTRUCTIONS

After filing your notice of appeal you have 10 days to tell the Superior Court what you want in the record that will be sent to the Court of Appeal; this is called the Notice Designating Record on Appeal. On the next few pages is a form to assist you in designating the record. What you choose to include in your record depends on the issues you wish to raise on appeal. This notice is filed in the Superior Court.

The Notice Designating Record on Appeal is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>. Select "Appellate" forms, then click on Form APP-003.

Filling out the Notice Designating Record on Appeal:

Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.
- (3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.
- (4) In the "Superior Court Case Number" box to the right, write the superior court case number.
- (5) In the "RE: Appeal filed on (*date*)" box, write the date the Notice of Appeal was filed.
- (6) In the "Court of Appeal Case Number (*if known*)" box immediately to the right, write the Court of Appeal case number, if you have it.
- (7) Specify the name of the county after the entry "TO: Clerk of the Superior Court of California County of (*name of county*)"
- (8) After the line marked "NOTICE IS HEREBY GIVEN", check the appropriate box to indicate whether you are the appellant (the appealing party) or respondent (the responding party).

Page 1, Entries 1-4

Check only one of the four boxes in entries 1-4.

Sample Form F

Check box "1" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you don't want a reporter's transcript. If you check this box, there is no need to fill out pages two or three. Date and sign the bottom of this form and you are done.

Check box "2" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you also want a reporter's transcript. If you check this box be sure to fill out the reporter's transcript section on page three; you do not have to fill out page two.

Check box "3" if you want the Superior Court to prepare a clerk's transcript but you don't want a reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two; you do not have to fill out page three.

Check box "4" if you want the Superior Court to prepare both the clerk's transcript and the reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two and the reporter's transcript section on page three.

At the bottom of page 1, write the current date on the form, type or print your name legibly, and sign the form.

Page Two (Notice Designating Clerk's Transcript):

Fill out this page only if you checked box "3" or "4" on page one; if you checked box "1" or "2" you do not need to fill out this page. The first seven documents are filled in for you. You may designate anything that was in the Superior Court file as part of your record on appeal, choosing as few or as many documents as you wish. What you choose to include in your record depends on the issues you wish to raise on appeal. You will need to make a \$100.00 deposit with the Superior Court if you select this option.

Page Three (Notice Designating Reporter's Transcript):

Fill out this page only if you checked box "2" or "4" on page one; if you checked box "1" or "3" you do not need to fill out this page. A reporter's transcript is a word for word typewritten record of everything that was said in court during a trial or hearing. For each day you want transcribed, write the reporter's name, the department of the Superior Court you were in, the date and the nature of the proceeding. The reporter's transcript costs money. You can ask the reporter to give you an estimate of what it will cost in advance or you can pay \$650 per day for days where there were more than three hours to be transcribed or \$350 per day where there were less than three hours to be transcribed.

Sample Form F

Page Four (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Notice Designating Record on Appeal and fill out the Proof of Service on page 4 of the form. See instructions accompanying [Sample Form C](#).

Due: 10 days after filing Notice of Appeal

File: Original with Superior Court
(Bring an extra copy to be file-stamped
for your file.)

Serve: Court Reporter (if reporter's transcript requested)
All counsel
All self-represented parties

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<p style="text-align: center;">NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)</p>	
RE: Appeal filed on <i>(date)</i> :	Superior Court Case Number: Court of Appeal Case Number <i>(if known)</i> :

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

TO: Clerk of the Superior Court of California, County of *(name of county)*:

NOTICE IS HEREBY GIVEN that *(name)*:

The ☐ Appellant ☐ Respondent in the above case elects to proceed with the following record on appeal:

(check only one)

1. ☐ (Appendix Only; no Reporter's Transcript)
 - a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
AND
 - b. elects to have no reporter's transcript. *(Date and sign only.)*
2. ☐ (Appendix and Reporter's Transcript)
 - a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.
AND
 - b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*
3. ☐ (Clerk's Transcript Only; no Reporter's Transcript)
 - a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2.)*
AND
 - b. elects to have no reporter's transcript.
4. ☐ (Clerk's and Reporter's Transcripts)
 - a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2)*
AND
 - b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*

Date:



(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE DESIGNATING CLERK'S TRANSCRIPT

(Cal. Rules of Court, rule 8.120)

- A. It is requested that the following documents in the superior court file be included in the clerk's transcript (*give the specific title of each document, an accurate description, and the date of filing*):

Document Title and DescriptionDate of Filing

(NOTE: Items 1–7 are required to be a part of the clerk's transcript and will automatically be included.)

1. Notice of appeal
2. Notice designating record on appeal (*this document*)
3. Judgment or order appealed from
4. Notice of entry of judgment (*if any*)
5. Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
6. Ruling on item 5
7. Register of actions (*if any*)
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.

- B. It is requested that the following EXHIBITS admitted into evidence or marked for identification be copied into clerk's transcript on appeal (*check only one box*):

1. ☐ All Exhibits
2. ☐ Specific Exhibits (*give the exhibit number [for example, Plaintiff's #1, Defendant's B, Respondent's A], a brief description, and admission status.*):

☐ See additional pages.

CASE NAME:

CASE NUMBER:

NOTICE DESIGNATING REPORTER'S TRANSCRIPT
(Cal. Rules of Court, rule 8.130)

Reporter's NameDept.DateNature of Proceedings

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

16.

17.

18.

19.

☐

See additional pages.

CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

☐ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Notice Designating Record on Appeal (Unlimited Civil Case)* as follows (*complete either a or b*):
 - a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope **and**
 - (a) ☐ **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. ☐ **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Sample Form K

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION [Insert division#]

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal No. _____

(Super. Ct. No. _____)

Appeal From a Judgment **[or Order]**
Of The Superior Court, County of _____
Hon. _____, Judge
[Superior Court Judge]

APPELLANT'S OPENING BRIEF

Your name
Your Address
Your Phone Number During the Day

Appellant [or Respondent]
Self-Represented

If Appellant's Opening Brief, this cover page is green.

If Respondent's Brief, this cover page is yellow.

If Appellant's Reply Brief, this cover page is tan.

Sample Form K

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
STATEMENT OF APPEALABILITY	1
STATEMENT OF FACTS	1
ARGUMENT	
I. GOLDILOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"	2
A. The Standard of Review	2
B. Elements of the Action	2
C. No Evidence of Wrongful Entry	3
CONCLUSION	4
CERTIFICATE OF COMPLIANCE	5

Sample Form K

TABLE OF AUTHORITIES

CASES

	Page
Gallin v. Poulou (1956) 140 Cal.App.2d 638.	3
Miller v. National Broadcasting Co. (1986) 187 Cal.App.3d 1463.	3
Williams v. General Elec. Credit Corp. (1946) 159 Cal.App.2d 527.	3
Williams v. Wraxall (1995) 33 Cal.App.4th 120.	2

STATUTES (if any)

OTHER

Restatement 2nd of Torts, section 167.	3
5 Witkin, Summary of California Law (9th ed. 1988)	3

Sample Form K

STATEMENT OF THE CASE

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass. (CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of \$50,000. (CT 27.)

STATEMENT OF APPEALABILITY

This appeal is from the judgment of the San Diego County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

Papa Bear lives in Los Angeles, California with his wife, Mama Bear and son, Baby Bear. (RT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (RT 25.) The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (RT 15.)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (RT 17.)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (RT 3.) Food was missing from the dining room table. (RT 4.) Baby Bear found Goldilocks asleep in his bed. (RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (RT 30.)

Sample Form K

An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (RT 25-26.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (RT 27-28.) She sat down on a bed and fell asleep. (RT 29.)

ARGUMENT

I. GOLDSILLOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"

A. The Standard of Review. The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wrexall* (1995) 33 Cal.App.4th 120, 132.)

B. The Elements of the Action. A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National*

Sample Form K

Broadcasting Co. (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

C. No Evidence of Wrongful Entry. Here, Goldilocks did not intend to enter on private property. She thought the Bears' house was a public, commercial boarding house. Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

Sample Form K

CONCLUSION

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

Respectfully submitted,

DATED:

By _____
(Signature)

(Your name-printed or typed)

Sample Form K

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains _____ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By _____
(Your Signature)

An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See [Sample Form C.](#))

Sample Form Q

STIPULATION TO EXTEND TIME TO FILE BRIEF - INSTRUCTIONS

The parties may stipulate to extend the briefing time for up to 60 days for each type of brief by filing one or more stipulations in the Court of Appeal **before** the brief is due. (CRC rule 8.212(b).) The stipulation must be signed by and served on all parties.

Filling out the Stipulation to Extend Time form:

- (1) Your name.
- (2) Your mailing address.
- (3) Your city, state and zip code.
- (4) Your telephone number where you can be reached during the day.
- (5) The plaintiff's name as it appears on your Superior Court caption.
- (6) Whether plaintiff is "appellant" or "respondent".
- (7) The defendant's name as it appears on your Superior Court caption.
- (8) Whether defendant is "appellant" or "respondent".
- (9) The Court of Appeal case number.
- (10) The Superior Court number from your Superior Court case.
- (11) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant's reply.
- (12) The date which will be the *new* due for the brief.
- (13) Name of person or counsel *agreeing* to grant the extension.
- (14) Name of person or counsel *requesting* the extension.
- (15) Number of days you are requesting the time to be extended.
- (16) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant reply.

Sample Form Q

(17) Name of the brief for which you are requesting an extension: appellant's opening, respondent's or appellant reply.

(18) New due date of your brief.

(19) Today's date.

(20) Signature of the party filing the stipulation.

(21) Date opposing party signed stipulation.

(22) Signature of opposing party.

File: Original and one copy with Proof of Service on all counsel and self-represented parties

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

Sample Form Q

(1)
(2)
(3)
(4)

Self-represented

COURT OF APPEAL, SECOND APPELLATE DISTRICT
DIVISION [Insert division #]
STATE OF CALIFORNIA

(5) _____,
Plaintiff and (6) _____,
v.
(7) _____,
Defendant and (8) _____.

D (9) _____.
(Superior Court No. (10) _____)
STIPULATION TO EXTEND TIME TO
FILE (11) _____,
BRIEF TO (12) _____.

The undersigned counsel of record of the respective parties in the above-entitled action hereby stipulate as follows:

1. (13) _____ has agreed to grant (14) _____ a
(15) _____-day extension for filing its (16) _____ brief.

2. The parties agree that there will be no prejudice to either party as a result of this extension.

3. The parties agree that (17) _____ brief will now be due on
(18) _____.

Dated: (19) _____.

(20) _____
Signature of Party Filing Stipulation
(or counsel if represented)

Dated: (21) _____.

(22) _____
Signature of Opposing Party
(or counsel if represented)

Sample Form R

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF - INSTRUCTIONS

If a party needs more than the 60 days already stipulated to, or if the opposing party refuses to stipulate to an extension, the party needing the extension must file an application for extension of time. The party seeking additional time must give reasons, also known as "**good cause**," why that extension is needed. (CRC rule 8.63.) You must serve a copy of your extension request on all parties (or the attorneys for represented parties). You should file an original of your extension request in the Court of Appeal, along with a proof of service. ([Sample Form C](#).) You must also provide the Clerk of the Court of Appeal with enough copies of the extension request for each party (including yourself) and stamped envelopes addressed to each party (including yourself). The Clerk will use these extra copies and envelopes to mail out the court's order granting or denying the extension request.

This form is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>. Select "Appellate" forms, then click on Form APP-006.

Filling out the Application for Extension of Time to File Brief form:

Caption

- (1) Fill out the top box of the form as follows: "Court of Appeal, Second Appellate District, Division [insert division #]." Indicate the Court of Appeal case number and the Superior Court case number in the boxes to the right.
- (2) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (3) In the next box down, indicate your name next to "APPELLANT" and the responding party's name next to "RESPONDENT."

Page 1, entries 1-8

Entry 1. Check whether the extension is for appellant's opening brief, respondent's brief or appellant's reply brief and indicate the date the brief is due. Add the date you would like the brief to be due after the "be extended to (*date*)" language.

Entry 2. Check one of the two boxes to indicate whether or not CRC rule 8.220 notice has been received.

Entry 3. Check whether there have been previous extensions. If earlier extensions were received, indicate how many were granted by stipulation, how many by the court, and for each type of extension, the total number of days briefing has already been extended.

Entry 4. Check why you are unable to file a stipulation.

Sample Form R

Entry 5. Give "**good cause**" for the extension by explaining why the extension is needed. (See CRC rule 8.63(c) for a list of the relevant factors.)

Entry 6. If a brief has already been filed, check whether the most recent brief filed was the Appellant's Opening Brief ("AOB") or the Respondent's Brief ("RB"), and give the date it was filed. If no brief has yet been filed, leave this entry blank.

Entry 7. Fill out the requested information for the length of the appellate record and the date the record was filed.

Entry 8. Leave this box blank if you are representing yourself. If you are an attorney, serve a copy of the application on your client and check the box.

Date the form at the bottom of page 1, type or print your name legibly, and sign.

Page 2 - Proof of Service

Have someone over the age of 18 who is not a party to the action serve the application and fill out the Proof of Service on page 2 of the form. See instructions accompanying [Sample Form C](#).

File: Original with a Proof of Service on all counsel and self-represented parties (if you are an attorney, serve your client), together with copies and preaddressed, stamped envelopes for each party.

Serve: All counsel
All self-represented parties
(If you are an attorney, serve your client.)

CASE NAME:	CASE NUMBER:
------------	--------------

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

☐ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Application for Extension of Time to File Brief (Civil Case)* as follows (*complete either a or b*):
 - a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope **and**
 - (a) ☐ **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:
 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. ☐ **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:
 - (3) Date delivered:
 - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

_____
(SIGNATURE OF DECLARANT)

COURTS AND PUBLIC LAW LIBRARIES

COURTS

Superior Courts in the Second District

You must file all *Notices of Appeal* and Designations of the Record accompanied by appropriate *Proofs of Service* at any filing window at any branch in the county in which your superior court case occurred. For a listing of the superior court locations in your county, please refer to the court's website at www.courtinfo.ca.gov. It is highly recommended that you file these documents at the appeals section of the superior court in your county. Those locations are as follows.

Los Angeles County:

Clerk, Appeals Section
Los Angeles Superior Court
Stanley Mosk Courthouse
111 North Hill St., Room #111
Los Angeles, CA 90013
(213) 974-5238

Ventura County:

Clerk, Appeals Division
Ventura Superior Court
800 S. Victoria Ave., Room #210 (Window 13)
(If mailing filing, P.O. Box 6489)
Venura, CA 93006
(805) 654-2269

San Luis Obispo County:

Clerk, Appeals Division
1050 Monterey St., Room #220
San Luis Obispo, CA 93408
(805) 781-5677

Santa Barbara County:

1100 Anacapa, 2nd Floor
Santa Barbara, CA 93010
(805) 568-2220

California Court of Appeal

For filing motions and briefs in the Court of Appeal, the address is:

Clerk, Court of Appeal
300 South Spring St., Room # 2217
Los Angeles, CA 90013

California Supreme Court

For filing copies of briefs and petitions for review in the California Supreme Court the address is:

California Supreme Court
Second Floor
300 South Spring Street
Los Angeles, CA 90013
(213) 830-7570

OR California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(415) 865-7000

PUBLIC LAW LIBRARIES

All four counties in Division Two have County public law libraries. Some, like Los Angeles County, have multiple branch locations. Below is a listing of the main locations for the law libraries, along with their websites from which other locations can be identified. Many of the libraries' websites contain links to other helpful legal research sites.

Los Angeles County:

301 West First Street
Los Angeles, CA 90012
(213) 629-3531
<http://lalaw.lib.ca.us/>

Ventura County:

800 S. Victoria Ave.
Ventura, CA. 93009
(805) 642-8982
<http://www.infopeople.org/ventura/vclaw/>

San Luis Obispo County:

County Government Center, Room 125

1050 Montgomery St.

San Luis Obispo, CA 93405

(805) 781-5855

<http://www.rain.org/~slolawli/>

Santa Barbara County:

Santa Barbara County Courthouse

1100 Anacapa

Santa Barbara, California 93101

(805) 568-2296

<http://www.countylawlibrary.org/info.htm>

CITING YOUR SOURCES OF INFORMATION

Every statement of law in your brief must be supported by a citation to a case, statute, rule, constitutional provision, treatise, law review article or other source that supports the statement you are making. The citation is usually contained in parentheses at the end of the sentence. (See [Sample Form K](#).) For example, your brief might state: "The elements of a cause of action for negligence are: duty, breach of duty, legal cause, and damages. (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463.)"

The California Style Manual is the manual followed by California courts for citation form. You can find the California Style Manual in any law library. However, if you follow the general guidelines in this Appendix, you will probably not need to consult the California Style Manual. The court is mainly interested in finding out where you got the information you have included in the brief. Your brief will be accepted as long as the citations are clear enough to identify your reference sources.

Here are some simple guidelines for proper citation form:

CASES:

You should include the name of the case you are citing, the year it was decided, the volume and page number of the official reporter where the case appears, and the page number in the case that specifically supports the proposition of law you are stating. For example, a California Supreme Court case would be cited as follows: *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1351. The "30 Cal.4th" refers to volume 30 of the fourth series of Official California Reports, which is the official reporter for California Supreme Court opinions. The "1342" refers to the page in volume 30 where the case starts. The "1351" is the page number of the case you are referring to in your brief. Similarly, a California Court of Appeal case would be cited as follows: *Albertson's, Inc. v. Young* (2003) 107 Cal.App.4th 106, 113. The "107 Cal.App.4th" refers to volume 107 of the fourth series of Official California Appellate Reports, which is the official reporter for California Court of Appeal opinions.

Federal court citations follow the same general format. United States Supreme Court cases can be found in three separate reporters: the United States Supreme Court Reporter (abbreviated U.S.), the Supreme Court Reporter (abbreviated S.Ct.), or the Lawyer's Edition Reporter (abbreviated L.Ed.). You may cite to any of these reporters. For example: *Montana v.*

United States (1981) 450 U.S. 544, 551. For other federal courts, your citation should identify which federal circuit or district court decided the case. Federal circuit court cases are cited as follows: *Clicks Billiards, Inc. v. Sixshooters, Inc.* (9th Cir. 2001) 251 F.3d 1252, 1257. "9th Cir." indicates that the case was decided by the Ninth Circuit Court of Appeals, and "F.3d" refers to the third series of the Federal Reporter. Federal district court cases are cited as follows: *Plute v. Roadway Package System, Inc.* (N.D. Cal. 2001) 141 F.Supp.2d 1005, 1010. "N.D.Cal." indicates that the case was decided by the United States District Court for the Northern District of California, and "F.Supp.2d" refers to the second series of the Federal Supplement Reporter.

For cases from other states, you will need to cite to the National Reporter System regional reporter or the state's official reporter. Identify which state court decided the case in your citation. Here is an example: *In re Gatti* (Ore. 2000) 8 P.3d 966, 972-973. "P.3d" refers to the third series of the Pacific regional reporter. Here is another example: *Fischer v. Governor* (N.H. 2000) 749 A.2d 321, 326. "A.2d" refers to the second series of the Atlantic regional reporter.

STATUTES:

For a California statute, give the name of the code and the section number. For example, "Code of Civil Procedure, section 1011" or "Family Code, section 3461." For a federal statute, cite to the United States Code (abbreviated U.S.C.). For example, "28 U.S.C. section 351."

RULES:

For rules, identify the body of rules you are citing and the specific rule number. For example, "Cal. Rules of Professional Conduct, rule 3-500" or "Cal. Rules of Court, rule 8.220(a)."

CONSTITUTIONS:

For constitutions, identify whether you are referring to California or United States Constitution and refer to the specific constitutional provision you are relying on. For example, "California Constitution, article IX, section 2" or "United States Constitution, Fourteenth Amendment."

TREATISES:

For legal treatises, you should indicate the volume number of the treatise you are citing (if it has more than one volume), the author of the treatise, the title, edition and year, and the section and page number that

supports the proposition of law you are stating. For example, "5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706." This is a citation to volume 5 of a treatise by author Witkin entitled Summary of California Law, and the specific portion of the treatise cited is section 607 of the Torts chapter on page 706.

LAW REVIEWS AND JOURNALS:

For law review or journal articles, you should identify the author, title of the article, year it was printed, name of the law review or journal, volume and page number, and the specific page number of the article you are citing to. For example: Volokh, *The Mechanics of the Slippery Slope* (2003) 116 Harv. L.Rev. 1026, 1033. The abbreviation "Harv. L.Rev." stands for Harvard Law Review, and this article appears in volume 116 of the Harvard Law Review at page 1026. If you do not know the proper abbreviation, you may spell out the entire journal name in your citation.

OTHER SOURCES:

If you are citing any other source, do your best to identify the source as accurately as possible, so that someone reading your brief could easily find it and look it up. As a general rule, you should identify the author, title, year, volume,

SUMMARY JUDGMENT AND DEMURRER

Demurrers and summary judgments represent special circumstances that necessitate slightly different procedural requirements throughout the appellate process. The three most important differences occur in determining the appealability of your appeal, identifying the order or judgment from which you can appeal, and in identifying the facts in the process of writing the brief. Those differences are discussed below.

Appealability

Demurrer If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a **demurrer** asking that the case be dismissed. If a cause of action has been stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer “with leave to amend,” in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. This ruling is an order but, by statute, may be appealed. (Code of Civil Procedure, section 581d.) In order for the order to be appealable, the order must say the case is dismissed (for more information, refer back to Chapter 1.) On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on the facts as alleged in the complaint.

Summary judgment In a **summary judgment**, one party may contend there are no facts that need to be decided, or the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts. If so, the summary judgment motion should be denied because the evidentiary conflict must be resolved in a trial. If not, the court can grant summary judgment in

favor of either of the parties. For example, if all the evidence shows that the light was green, the court does not need to hold a trial to determine whether the light was red or green.

A trial court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a judgment based on that ruling (again, for more information, refer back to Chapter 1.) In looking at the facts on appeal, the question is exactly the same as the issue before the trial court: Is there a genuine dispute as to material facts that must be resolved at a trial? If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial. Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. With appropriate page number citations to the record, you should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. If there are no factual disputes, you should argue that the trial court incorrectly applied the law in granting summary judgment to the opposing side.

Statement of the facts in the brief

Your statement of facts will be different if the case was dismissed without a trial. In such a case, the facts have not yet been established by the trial court. Demurrers and summary judgments are two types of pretrial motions that may cause a case to be dismissed without a full trial. Because cases are commonly dismissed on demurrer or summary judgment, we shall explain a little about how to write the statement of facts when appealing from such a dismissal.

Demurrer If a plaintiff files a case in superior court and the facts in the complaint do not state a cause of action (that is, they give no legal basis for the defendant to be held responsible), the defendant may bring a demurrer asking that the case be dismissed. If a cause of action has been stated, the superior court overrules the demurrer and the case continues on. If no cause of action has been stated but the court believes there may be more facts that will enable the plaintiff to state a cause of action, the court sustains the demurrer "with leave to amend," in which case the plaintiff can restate his or her case. If the court believes there is no cause of action, the court sustains the demurrer without leave to amend, and the case is dismissed. This ruling is an order but, by statute, may be appealed. (Code of Civil Procedure, section 581d.) In order for the order to be appealable, the order must say the case is dismissed (for more information, refer back to

Chapter 1.) On appeal, the Court of Appeal looks only at the complaint and assumes all of the factual allegations are true in order to rule on whether the complaint states a cause of action. Thus, the Statement of Facts in the opening brief should be based on the facts as alleged in the complaint.

Summary judgment In a summary judgment, one party may contend there are no facts that need to be decided, or the parties may agree on what the facts are. Either side (and sometimes both sides) may bring a motion for summary judgment arguing that they are entitled to a judgment in their favor without a trial. Unless the parties agree that there is no genuine dispute about material facts in the case, the court must determine whether there are any such disputed facts. Unlike a demurrer, the court is not limited to the allegations of the complaint, and it will review sworn statements or other evidence submitted by the parties in writing. The court will then decide if there is conflicting evidence in the record as to the material facts. If so, the summary judgment motion should be denied because the evidentiary conflict must be resolved in a trial. If not, the court can grant summary judgment in favor of either of the parties. For example, if all the evidence shows that the light was green, the court does not need to hold a trial to determine whether the light was red or green.

A trial court's ruling granting summary judgment is an order. A party seeking to appeal the ruling must first get a *judgment* based on that ruling (again, for more information, refer back to Chapter 1.) In looking at the facts on appeal, the question is exactly the same as the issue before the trial court: Is there a genuine dispute as to material facts that must be resolved at a trial? If there is such a factual dispute, summary judgment should not have been granted, the judgment should be reversed, and the case should go back to the trial court for a trial. Thus, if you are the appealing party, your Statement of Facts should emphasize the evidence in the record that you believe conflicts with the trial court's ruling. With appropriate page number citations to the record, you should point out the evidence which demonstrates there is a factual conflict that must be resolved in a trial. If there are no factual disputes, you should argue that the trial court incorrectly applied the law in granting summary judgment to the opposing side.